

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOARD OF TRUSTEES OF THE  
LOCALS 302 AND 612 OF THE  
INTERNATIONAL UNION OF  
OPERATING ENGINEERS  
CONSTRUCTION INDUSTRY  
HEALTH AND SECURITY FUND,  
et al,

Plaintiffs,

v.

FENIX EARTHWORKS LLC,

Defendant.

CASE NO. C22-0799JLR

ORDER

**I. INTRODUCTION**

Before the court is Plaintiffs Board of Trustees of the Locals 302 and 612 of the International Union of Operating Engineers Construction Industry Health and Security Fund, Locals 302 and 612 of the International Union of Operating Engineers-Employers

Construction Industry Retirement Fund, and Western Washington Operating Engineers-Employers Training Trust Fund (collectively, the “Trusts”) motion for an award of attorney’s fees. (Mot. (Dkt. # 36).) Defendant Fenix Earthworks LLC (“Fenix”) did not respond to the Trusts’ motion. (*See generally* Dkt.) The court has considered the motion, the relevant portions of the record, and the governing law. Being fully advised, the court GRANTS the Trusts’ motion for an award of attorney’s fees.

## II. BACKGROUND

The court set forth the relevant factual and procedural background of this case in its March 29, 2024 order granting the Trusts’ motion for summary judgment. (*See* 3/29/24 Order (Dkt. # 35) at 2-4.) As part of that order, the court granted the Trusts’ motion for summary judgment on its claim for reasonable attorney’s fees and costs pursuant to the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1132(g)(2), and the parties’ Trust Agreements. (*Id.* at 8-9 (citing Compl. (Dkt. # 1) ¶ 18, Ex. B (“Trust Agreements”) at 83; Keck Decl. (Dkt. # 32) ¶¶ 42-47 & Exs. G-J (revised trust agreements and collections policy).) The court directed the Trusts to file a motion for attorney’s fees by no later than April 26, 2024. (*Id.* at 10.) The Trusts timely filed their motion on April 15, 2024. (Mot.) No party opposed the motion. (*See generally* Dkt.) Thus, the motion is now ripe for decision.

## III. ANALYSIS

To determine whether counsel’s requested fees are reasonable, the court applies the “lodestar” method. *See Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). The court begins by finding the “lodestar,” which is calculated by multiplying

1 “the number of hours . . . reasonably expended on the litigation by a reasonable hourly  
 2 rate.” *Id.* (quoting *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n.4 (9th Cir.  
 3 2001)). Although the resulting figure is presumptively reasonable, the court may, if  
 4 circumstances warrant, adjust the lodestar figure up or down based on additional  
 5 factors—referred to as the “*Kerr* factors”—that were not already subsumed in the initial  
 6 lodestar calculation. *Id.* at 982 (referring the to 12 factors enumerated in *Kerr v. Screen*  
 7 *Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)); *see also Cairns v. Franklin Mint Co.*,  
 8 292 F.3d 1139, 1158 (9th Cir. 2002) (noting that the court need not consider the *Kerr*  
 9 factors unless necessary to support the reasonableness of the fee award). These factors  
 10 are:

11 (1) the time and labor required, (2) the novelty and difficulty of the questions  
 12 involved, (3) the skill requisite to perform the legal service properly, (4) the  
 13 preclusion of other employment by the attorney due to acceptance of the case,  
 14 (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time  
 15 limitations imposed by the client or the circumstances, (8) the amount  
 involved and the results obtained, (9) the experience, reputation, and ability  
 of the attorneys, (10) the ‘undesirability’ of the case, (11) the nature and  
 length of the professional relationship with the client, and (12) awards in  
 similar cases.

16 *Kerr*, 526 F.3d at 70.

17 The “reasonable hourly rate” used in the lodestar “is the rate prevailing in the  
 18 community for similar work performed by attorneys of comparable skill, experience, and  
 19 reputation.” *Camacho*, 523 F.3d at 979 (internal quotations and citations omitted). The  
 20 relevant community for determining whether hourly rates are reasonable “is the forum in  
 21 which the district court sits.” *Id.* (citing *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir.  
 22 1997)). To determine a reasonable number of hours to be compensated, the court must

1 consider “whether, in light of the circumstances, the time could reasonably have been  
2 billed to a private client.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir.  
3 2008). The hours claimed by a party may be reduced by the court if the “documentation  
4 of the hours is inadequate”; “if the case was overstaffed and hours are duplicated”; or “if  
5 the hours expended are deemed excessive or otherwise unnecessary.” *Chalmers v. City*  
6 *of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986); *see also McCown v. City of*  
7 *Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009) (stating that the court may exclude hours  
8 that were not reasonably expended, such as those “that are excessive, redundant, or  
9 otherwise unnecessary” (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983))).

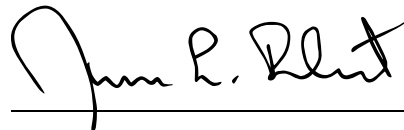
10 Here, Plaintiffs seek an award of \$12,833.50 in attorney’s fees for 46.30 hours of  
11 work by attorney Noelle E. Dwarzski at rates of \$275.00 per hour through December  
12 2022 and \$285.00 per hour beginning in January 2023. (*See generally* Mot.; *see id.*, Ex.  
13 A (“Billing Records”).) The court has reviewed Plaintiffs’ attorney’s hourly rates and  
14 determines that they are consistent with the hourly rates charged by attorneys of  
15 comparable skill, experience, and reputation who practice ERISA law in the Seattle legal  
16 community. The court further determines that counsel’s hours billed are reasonable.  
17 Counsel has not block-billed her hours, and the court finds no duplication of effort or  
18 billings that are excessive or otherwise unnecessary in light of Plaintiffs’ need to oppose  
19 a motion to vacate an order of default (*see* 11/9/22 Order (Dkt. # 22)) and to engage in  
20 extensive negotiations with Fenix regarding a potential payment plan (*see generally*  
21 Billing Records). Therefore, having considered the *Kerr* factors, the court concludes that  
22

1 Plaintiffs' lodestar is reasonable and GRANTS Plaintiffs' request for an award of  
2 \$12,833.50 in attorney's fees incurred in this litigation.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the court GRANTS Plaintiffs' motion for an award of  
5 \$12,833.50 in attorney's fees incurred in this litigation (Dkt. # 36).

6 Dated this 29th day of April, 2024.

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9 JAMES L. ROBART  
10 United States District Judge  
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